

Memorandum

To: Counsel of Record

From: Joseph G. Scoville, US Magistrate Judge

Re: El Camino Resources Ltd. et al. v. The Huntington Nat'l Bank
Case No. 1:07 cv 598

Date: August 7, 2009

I am requesting further explanation of El Camino's unjust enrichment claim. Plaintiffs' brief (doc. # 516 at 72-75) appears to present the theory that "defendant's inequitable conduct provided it with benefits that originated with the plaintiff." (Id. at 72). At oral argument, Mr. Graham presented a different theory, one that appears not to require any showing of inequitable conduct by defendant:

Our theory is very simple. If a person who commits a criminal act of taking somebody's money and for whatever reason uses that money to pay off the debt of another, the victim should be able to knock on the bank's door and say, Between myself, the innocent victim, who everybody agrees was the victim of a crime, and the bank who received a windfall payment from someone that didn't owe them any money and didn't owe them any obligation, in balancing those under the two-prong test of the Michigan Supreme Court, you are unjustly holding those funds and should return them.

THE COURT: It's sort of like a bona fide purchaser analysis?

MR. GRAHAM: Well, that is exactly the analysis that the courts go through.

(Tr, doc. # 573 at 67).

I cannot locate any authority in plaintiffs' brief supporting the latter theory. I am therefore requesting that plaintiffs file a supplemental brief, of no more than five pages, setting forth authorities under Michigan law that support this theory of recovery for unjust enrichment. I would like to have this no later than next Wednesday, **August 12, 2009** if possible. Defendant may file a response of like length by Friday, **August 14**.

Thank you.